

**IN THE U.S. DISTRICT COURT FOR MARYLAND,
SOUTHERN DIVISION**

BEYOND SYSTEMS, INC.)	
)	
Plaintiff)	
v.)	Case No.PJM 08 cv 0921
)	
WORLD AVENUE USA, LLC, et al.)	
Defendants)	
_____)	

**WORLD AVENUE USA, LLC'S NOTICE OF
OF SUPPLEMENTAL AUTHORITY**

Defendant World Avenue USA, LLC ("WAUSA"), by and through the undersigned counsel, respectfully files this Notice of Supplemental Authority ("Notice") supporting its Motion to Challenge Plaintiff Beyond Systems, Inc.'s Designation of Video Inspections and Depositions as Confidential and For Sanctions, as it relates to the ESI Deposition of Paul Wagner taken in this case. *See* DE 293.

Just three days ago, BSI reiterated its position that the ESI deposition of Paul Wagner is Confidential. *See* DE 403 ("BSI has de-designated deposition testimony as described in the opposition at DE 345 and its Exhibit A-3").

Yesterday, WAUSA learned that BSI advised Connexus' counsel in the *Kraft* litigation that BSI has "reviewed the transcript [of the deposition of Paul A. Wagner] and are de-designating the entire transcript and all four exhibits." A copy of the email from S. Bieliki to A. Rothman is attached hereto as Exhibit 1. BSI's de-designation comes after months of motion practice challenging the wrongful confidentiality designation and WAUSA's inquiries to clarify whether and how the ESI deposition could possibly be confidential under any good-faith interpretation of the applicable Court Order. *See* DE 293, 306, 324, 345, 358, 386, 391.

This final act in de-designating the ESI Deposition of Paul Wagner without telling the Court cements the foundation for an award of sanctions. As in *In re Ullico Inc. Litigation*, 237 F.R.D. 314, 317-18 (D.D.C. 2006), *Del Campo v. American Corrective Counseling Services, Inc.*, No. C-01-21151 JP (PTV), 2007 WL 3306496 (Nov. 6, 2007, N. D. Cal.), and *Humphreys v. Regents of The Univ. of Calif.*, No. C-04-03808 SI (EDL), 2006 U.S. Dist. LEXIS 97906 (Nov. 14, 2006, N.D. Cal.), the deposition never should have been designated confidential in the first place. BSI's most recent act proves the point. Under the circumstances, BSI's actions in *Kraft* are tantamount to an admission that it has, and never had, a justiciable contrary argument. Fees should be awarded forthwith.

Dated: August 27, 2010

Respectfully submitted,

Attorneys for *World Avenue USA, LLC*

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